

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**

**IN THE MATTER OF:**

Ellefson & Sons Building Company, Inc.  
4492 Vassar  
Dearborn Heights, Michigan 48125

**Administrative Order**  
**EPA-5-99-113(a)-MI-6**

Proceeding Pursuant to  
Sections 113(a) (3) and 114(a)  
of the Clean Air Act, 42 U.S.C.  
§§ 7413(a) and 7414(a)

**STATUTORY AUTHORITY**

The following Order is issued pursuant to Sections 113(a) (3) and 114(a) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a) (3) and 7414(a).

1. Section 114(a) of the Act, 42 U.S.C. § 7414(a), authorizes the Administrator of the United States Environmental Protection Agency (U.S. EPA) to require any person who owns or operates an emission source or who is subject to any requirement of the Act or any State Implementation Plan (SIP) required by the Act, to make reports and provide information necessary to determine compliance with the Act.
2. Section 113(a) (3) of the Act, 42 U.S.C. § 7413(a) (3), authorizes the Administrator, whenever the Administrator finds that a person has violated or is in violation of, among other provisions, a requirement imposed by U.S. EPA pursuant to Section 114 of the Act, 42 U.S.C. § 7414, to issue an Order requiring a person to comply with Section 114 of the Act.

**REGULATORY AUTHORITY**

3. Section 112 of the Act, 42 U.S.C. § 7412, authorizes the Administrator of the United States Environmental Protection Agency (U.S. EPA) to promulgate National Emission Standards for Hazardous Air Pollutants (NESHAPs) and prohibits owners and operators from operating stationary sources in violation of the asbestos NESHAP regulation.
4. The NESHAP for asbestos was initially promulgated on April 6, 1973 (38 Fed. Reg. 8826), and is codified, as subsequently revised, at 40 C.F.R. Part 61, Subpart M.
5. The asbestos NESHAP applies to, among other persons, each "owner or operator of a demolition or renovation activity," as defined at 40 C.F.R. § 61.141.

6. 40 C.F.R. § 61.141 defines "demolition" in part, as the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.
7. 40 C.F.R. § 61.141 defines "owner or operator" as any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation or both.

### **FINDINGS**

8. Ellefson & Sons Building Company, Inc. (Ellefson) owns and operates a demolition business located at 4492 Vassar in Dearborn Heights, Michigan.
9. Ellefson, as an owner or operator, is subject to the requirements of Section 112 of the Act and the NESHAP for asbestos; and therefore, is subject to the requirements of Section 114 of the Act, 42 U.S.C. § 7414, governing requests for information by U.S. EPA.
10. On October 30, 1998, U.S. EPA issued an information request to Ellefson pursuant to Section 114 of the Act (Section 114 Request), a copy of which is attached as Exhibit 1.
11. As more specifically stated in the Section 114 Request, U.S. EPA required Ellefson to supply general information about its demolition operations including facility information, dates of demolition, copies of asbestos surveys, and notifications of intent to demolish. (Exhibit 1).
12. The Section 114 Request required a response within ten (10) calendar days from the receipt of the Section 114 Request. (Exhibit 1).
13. Ellefson failed to respond to the Section 114 Request; Ellefson did not submit the requested information within ten (10) calendar days of receipt of Section 114 Request. To date Ellefson has not responded to the Section 114 Request.

### **ORDER**

Based on the foregoing, U.S. EPA finds that Ellefson violated the requirements of Section 114 of the Act, 42 U.S.C. § 7414. Therefore, pursuant to Section 113(a) (3) of the Act, 42 U.S.C. § 7413(a) (3), it is hereby ORDERED that:

14. Ellefson comply with Section 114(a) of the Act, 42 U.S.C. § 7414(a), by immediately submitting all information required by the Section 114 Request dated October 30, 1998, as described in paragraph 3 and 4 of the Findings section of this Order.

15. All submittals shall be sent to:


Jennifer Darrow  
 Air Enforcement and Compliance Assurance Branch (AE-17J)  
 U.S. Environmental Protection Agency, Region 5  
 77 West Jackson Boulevard  
 Chicago, Illinois 60604.

#### GENERAL PROVISIONS

16. This Order in no way affects Ellefson's responsibility to comply with other local, State, and Federal laws and regulations, including other applicable provisions of the federally approved Michigan SIP.
17. Nothing in this Order shall be construed as a waiver by the Administrator of the U.S. EPA of any rights or remedies under the Clean Air Act, including but not limited to, Section 303 of the Act, 42 U.S.C. § 7603. U.S. EPA reserves the right to collect any penalties and pursue appropriate relief under Section 113 and any other applicable Sections of the Act, or any other Federal laws or regulations, for Ellefson's failure to comply with the Section 114 Request and any other violations of the Act.
18. Nothing in this Order shall be construed to restrict in any way U.S. EPA's authority under Section 114 of the Act, 42 U.S.C. § 7414.
19. Nothing in this Order shall be construed as a waiver by the Administrator of the U.S. EPA of Ellefson's obligation to comply with the schedule set forth by the U.S. EPA in its October 30, 1998, Section 114 Request.
20. Failure to comply with this Administrative Order may subject Ellefson to penalties of up to \$27,500 per day of violation, pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27. See 61 Fed. Reg. 69360 (Dec. 31, 1996) and 62 Fed. Reg. 13514 (Mar. 20, 1997).
21. Section 113(a)(4) requires that an Order shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. Therefore, U.S. EPA is providing to Ellefson the opportunity to confer with the U.S. EPA concerning this Order. However, if the U.S. EPA is not contacted by Ellefson within 10 days of Ellefson's receipt of this Order, the Order shall become effective on the tenth day.

22. The provisions of this Order shall apply to and be binding upon Ellefson, its officers, directors, agents, servants, employees assignees and any successor(s) in interest. Ellefson shall give notice of this Order to any successor(s) in interest, prior to transfer of ownership, and shall simultaneously verify to U.S. EPA, Region 5, at the address above, that such notice has been given.
23. Pursuant to 40 C.F.R. Part 2, Subpart B, Ellefson is entitled to submit a claim of business confidentiality regarding any portion of the information submitted in response to this Order. Failure to assert a claim of business confidentiality renders all submitted information available to the public without further notice. Information which is subject to a claim of business confidentiality may be available to the public only to the extent provided in 40 C.F.R. Part 2, Subpart B.
24. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information in an administrative action or investigation involving U.S. EPA and individuals or entities.
25. All information collected pursuant to this Order can be used for civil, criminal, and administrative enforcement purposes.

12/31/98  
Date

  
Stephen Rothblatt, Acting Director  
Air and Radiation Division